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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,141	04/09/2001	John W. Chrisman III	4826US	8520

7590 02/12/2007

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EXAMINER	
PIERCE, WILLIAM M	

ART UNIT	PAPER NUMBER
3711	

MAIL DATE	DELIVERY MODE
02/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/832,141	Applicant(s) CHRISMAN, JOHN W.	
	Examiner William M. Pierce	Art Unit 3711	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

WILLIAM M. PIERCE
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: With respect to the Declaration of Mr. Chrisman. Storm markets it scented bowling balls as an entry level ball available for around $65. While it is stated in para. 8 that these balls are "higher priced than other bowling balls in the same marked segment", it is left out and equally true that they are priced higher than other entry level balls on the market. In para. 9, applicant states that "our scented balls quickly began outselling our unscented bowling balls". But fails to mention that it appears that all of the unscented bowling balls are in the mid to high range, or higher priced. Not mentioned is that the "Tropical Strom" is the only entry level ball offered by Storm. It is submitted that the growth of sales in bowling balls, revenues and market is the introduction of a line of balls to the entry level bowler. This entry into the entry level bowling ball market is considered to be Storms success and not connected to only the scent of the bowling balls. The question here is whether Storm would have enjoyed equivalent success in the entry into the entry level market if the bowling balls were NOT scented? There is no evidence to make that determination. In para. 10, he attests that the success is not related to "marketing expenditures". While the same amount money may be spent on marketing, it appears that the success of the Tropical Storm is related to a successful marketing "strategy". Storm calls this marketing "Pro Pin" Technology and trademarks the name. This technology boasts that the balls are "regularly used by touring professionals" . As noted by para. 16, 15 top pro bowlers used Strom's scented bowling balls. So for $65, a person can buy an entry level priced ball marketed as used by pro bowlers. The alternative is to by a high end ball price at over $100 that makes the same claims to being used by professional bowlers. As such the success of Storm is by the endorsement of pro bowlers on their entry level Tropical Storm balls and not in the patented subject matter. As to the media coverage of the balls, contacts, aggressive press releases, paid advertising all contribute to the amount of media coverage. it is clear that the balls are a "novelty". But that does not make them novel. An aggressive media campaign to exploit a novelty bowling ball that is scented will attribute to media coverage. As such there no showing the medial is related to the non-obviousness of a scented bowling ball.
With respect to the request for consideration. The invention is considered fairly taught by the applied art. Applicant is not the inventor of two-part resin use in bowling balls as stated in the final rejection. Each type of resin has known properties and performance expectations when applied to bowling balls. To apply fragrance to any polymer motivated to make the polymer product smell better as taught by the applied art. As such applicant's remarks are not persuasive. .